Ved Paul Anand Vs. Chief Controller of Imports and Exports

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Court : Punjab and Haryana

Decided On : Sep-06-1982

Reported in : 1984(15)ELT113(P& H)

Judge : Surinder Singh, J.

Acts : Imports and Exports (Control) Act - Sections 4(1); Constitution of India - Articles 226 and 227; Imports and Exports (Control) Order, 1955

Appeal No. : Amended Writ Petition No. 2044 of 1982

Appellant : Ved Paul Anand

Respondent : Chief Controller of Imports and Exports

Advocate for Def. : H.S. Bedi, Adv.

Advocate for Pet/Ap. : N.C. Jain, Adv.

Judgement :

Surinder Singh, J.

1. By means of this Writ Petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks to impugn and obtain a direction quashing the impugned orders Annexures P/7 and P/9 passed by the Chief Controller of Imports & Exports on June 4, 1980 and April 18, 1981, respectively.

2. Certain facts connected with the present Writ Petition may be recorded. The Writ Petition was admitted on June 4, 1982, with a direction that the same be listed for hearing in the week commencing July 19, 1982, high-up in the list, as no interim stay was allowed in favour of the petitioner. The Writ Petition was then brought on the daily list with effect from July 12, 1982. When it was taken up for hearing on July 19, 1982, no one appeared on behalf of the respondent-Department. After hearing ex parte arguments of the counsel for the petitioner, the judgment was reserved. Before the pronouncement of the judgment, Civil Miscellaneous Application No. 1798 of 1982 was filed in the Registry on August 3, 1982, stating that the term of the previous counsel for the Department had expired and no written statement on behalf of the Department had been filed. It was prayed that the matter may be heard afresh after giving an opportunity to the respondent to file a reply in the ease. An order was passed by this Court on August 6, 1982 in the presence of the counsel for the parties, to the effect that the Writ Petition be listed for re-hearing on August 20, 1982. It was further specifically ordered that in case the respondent was desirous of filing any written statement, he should do so at least four days prior to the date of hearing and deliver a copy of the same in advance to the counsel for the writ-petitioner. When the case was taken up on the next date, a prayer was made by Mr. H. S. Bedi, learned counsel for the respondent for another adjournment to enable the Department to file a written statement. The prayer was allowed and the case was adjourned to August 30, 1982. When the same was taken up for hearing on August 30, 1982, the learned counsel for the respondent stated at the bar that in spite of having contacted the Department, no written statement was forthcoming and he was, therefore, unable to file the same. The arguments in the case were, therefore, heard on the basis of the available record and in the absence of the written statement.

3. Coming to the facts of the case, the sequence of events as narrated in the Writ Petition may be briefly recapitulated. The petitioner was one of the three partners of Messrs Oriental Industrial Corporation, Mohali, Chandigarh (hereinafter referred to as the Firm), the two other partners being Sarvshri Surinder Kumar Anand and Walaiti Ram Chadha. The petitioner remained partner of the said Firm uptil April 15, 1977 on which date by virtue of a Dissolution Deed, he ceased to be a partner

of the Firm. Thereafter the remaining two partners constituted the original Firm, named above. The petitioner produced a copy of the Dissolution Deed as Annexure P/l to the Writ Petition. It was averred that by means of a registered letter, dated September 1, 1977, (Copy Annexure P/2), the Dissolution Deed and the new Partnership Deed were sent to the Registrar of Firms, Punjab, Chandigarh. Similar intimation was sent to the Income-tax Authorities, the Director of Industries and all other concerned officers. The petitioner produced three Certificates in regard to the change of partnership of the Firm. In the first certificate issued by the Registrar of Firms, Punjab, on January 6, 1978 (Copy Annexure P/3), it is specifically mentioned in the column of 'Remarks' that the petitioner Ved Paul Anand had ceased to be a partner of the Firm with effect from April 15, 1977. The second certificate (Copy Annexure P/4) was issued by the Deputy Director on behalf of the Director of Industries, Punjab, on July 4, 1980, stating that only two partners, namely, Surinder Kumar Anand and Walaiti Ram Chadha constituted the Firm with effect from April 16, 1977. The third certificate (Copy Annexure P/5) is of the Income-tax Officer, Rupnagar, issued on July 2, 1980 to the effect that the Firm Messrs Oriental Industrial Corporation, Mohali, is constituted by only two partners, namely, Surjnder Kumar Anand and Walaiti Ram Chadha with effect from April 16, 1977 in accordance with the fresh Partnership Deed filed in the Income-tax Office. A reference to the above facts has been necessitated in view of the sole contention advanced on behalf of the petitioner that because of his retirement from the partnership of the Firm with effect from April 15, 1977, the respondent-Department could not pass the impugned orders to the extent of the petitioner's personal liability,

4. Giving the background of the action taken by the respondent-Department culminating with the impugned orders, it is averred in the Writ Petition that the premises of the Firm were inspected by the respondent, Chief Controller of Imports and Exports on July 1, 1977 and on that date some documents etc. were shown to the Inspecting Officer. The Firm was directed to produce certain other records and documents before the Authorities at Delhi. It is stated that not being satisfied with the working of the Firm, the respondent gave a Notice to the Firm on May 28, 1979 calling upon it to show cause as to why penalty be not imposed on the Firm under Section 4(1)(i)(a) of the Imports and Exports (Control) Act and also

under clause 8(f) and (h) of the Imports & Exports (Control) Order, 1955, as amended. According to the petitioner, although he had severed his connection with the Firm with effect from April 15, 1977, no Show Cause Notice was issued to him separately by the respondent. It is further stated that being not satisfied with the reply filed by the Firm to the Show Cause Notice, the respondent passed the impugned order, dated June 4, 1980 (Annexure P/7) imposing a penalty of Rs. 20.00 lakhs on the Firm and also debarring the Firm and its partners from the receipt of the import licence/ imported goods etc. for a period of ten years. It is stated that when the petitioner learnt about the passing of the aforesaid order, he sent a notice through his counsel on March 14, 1981 to the respondent-Department that the circular issued by the Department, debarring the petitioner from import licences etc. had been issued under a patent mistake and ignoring the fact that he had ceased to be a partner of the Firm with effect from April 15, 1977. The prayer made in the notice was that the circular issued by the Department may be revised and in the fresh circular, the name of the petitioner be deleted from the array of persons who had been debarred. A copy of the said notice has been produced as Annexure P/8. The respondent-Department filed reply to the said notice vide copy, Annexure P/9, stating that the name of the petitioner could riot be deleted from the circular because he was a partner of the Firm at the relevant time. This final decision by the respondent prompted the petitioner to approach this Court in the present Writ Petition, in which the prayer is that the impugned orders he quashed' and a Writ of Mandamus be issued to the respondent directing them to delete the name of the petitioner from the array of persons who had been debarred from receipt of import and export licences.

5. As already noticed, in spite of opportunities having been afforded to the respondent, no reply to the averments made in the Writ Petition has been filed, with the result that these averments have to be accepted unless they can be shown to be otherwise incorrect. The primary averment in this behalf is the fact that with effect from April 15, 1977, the petitioner had ceased to be a partner of the Firm Messrs Oriental Industrial Corporation, Mohali, Chandigarh, against whom the proposed action is being taken by the respondent. The cessation of partnership is proved not by mere assertion of the petitioner, but from a number of documents, i.e., Certificates, Copies Annexures P/3, P/4 and P/5 issued by

various Departments in that behalf. There is no challenge to the authenticity of these documents. In these circumstances, it must be held that the contention of the petitioner that he ceased to be a partner of the above-mentioned Firm with effect from April 15, 1977, is correct.

6. In the wake of the above finding, the question which falls for consideration is as to whether the respondent-Department was justified in imposing a penalty of Rs. 20 lakhs on the Firm and also debarring the Firm and its partners from receipt of imported licences/imported goods etc. for a period of ten years. In so far as the imposition of the above penalty against the Firm, as constituted by its remaining partners after the exclusion of the petitioner, is concerned, from the very nature of the stand of the petitioner, he has no locus standi to plead the cause of the Firm and its remaining partners. All that the petitioner claims is that imposition of the above penalty, in so far as the petitioner is concerned, is not only illegal but is even otherwise in violation of the principles of natural justice. The submission is that on the date when the premises of the Firm were inspected by the respondent, i.e., July l, 1977, the petitioner was evidently not there, being no longer a partner of the Firm. Thereafter even if a notice to show cause was issued to the Firm, the same was not within the knowledge of the petitioner for the reason stated above. There is no averment on behalf of the respondent that any show-cause notice was served upon the petitioner personally and this being so, the action of the respondent in so far as it affects the petitioner, is certainly illegal and impinges upon the rules of natural justice. The matter does not rest there. As soon as the petitioner learnt about the passing of the impugned order, he served a notice (Copy Annexure P/8) upon the Department to revise its decision and to issue a fresh circular in which the name of the petitioner be deleted from the array of persons who had been debarred from receiving import licences/imported goods etc. The respondent, however, rest content by sending him a cryptic reply that his name cannot be deleted from the circular, as he was a partner of the Firm at the relevant time. This is nothing but exercise of an arbitrary authority and such an action has to be struck down.

7. In view of the facts noticed above, though it is not necessary to go into the merits of the case, but for the sake of a closer scrutiny, it may be noticed that even

according to the case of the respondent as detailed in the show-cause notice, out of the imported goods valued at Rs. 97.75 lakhs, the Firm had produced documentary proof indicating the import and use of goods worth Rs. 47.25 lakhs. The charge against the Firm is that it had failed to produce the consumption registers in respect of the remaining imported goods worth Rs. 50.50 lakhs. It also mentioned in the show-cause notice that 82 licences/R. Os. had been issued to the Firm, out of which the Firm had explained the consumption of goods referrable to 25 licences/ R. Os., leaving 57 licences/R. Os. for explanation regarding consumption. There is no material on the record of this case to show as to which of these 57 licences/R. Os. have remained unexplained and whether these licences/ R. Os. pertain to the period during which the petitioner was a partner of the Firm. This material which must be in the possession of the respondent-Department, could have been easily placed on the record, but as already noticed, it has not even cared to put a written statement containing necessary material before this Court. The non-production of this vital material raises a presumption against the Department. The impugned order (Copy Annexure P/7) imposing the penalty and debarring its proprietor/partners from receipt of import licences/imported goods for a period of ten years (c)annot, therefore, apply to the writ-petitioner who had ceased to be a partner of the Firm.

8. The learned counsel for the respondent was obliged to fall back on two legal objections, the first being that the impugned order Annexure P/7 was appealable under the law and no appeal having been preferred against it, the present Writ Petition was not competent. The second objection in the same context is that in any case the Writ Petition suffers from the malady of laches and should, therefore, be thrown out on that score. Both these objections are, however, not tenable-in view of the finding already recorded that the petitioner had ceased to be a partner of the Firm with effect from April 15, 1977. The impugned order having been passed behind his back, the petitioner had neither any knowledge nor occasion to file any appeal against it. The question of laches also does not arise, as the petitioner had taken steps to approach the respondent with a prayer to revise the order, as soon as he learnt about the same. It was after he was informed about the rejection of his representation vide Department's letter Annexure P/9 that he approached this Court for relief. This apart, the objection regarding laches or the

non-availing of the alternate remedy cannot be heard in respect of an order which, is on the face of it illegal and opposed to the principles of natural justice. The contentions of the learned counsel for the respondent must, therefore, be repelled.

9. In the result, this Writ Petition succeeds and it is ordered as follows :

(a) the impugned orders, i.e., Annexure P/7 and its reiteration in Annexure P/9, are quashed to the extent that they will not apply to the petitioner;

(b) A Mandamus is issued to the respondent to delate the name of the petitioner from circular bearing No. 14/80-81/HQ, dated June 12, 1980, debarring him from import licences etc. in consequence of the action taken vide the impugned order, Annexure P/7.

10. There shall be no order as to costs of this Writ Petition.